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Understanding Women's Experiences of Citizenship in Nigeria

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Introduction

Citizenship, as the relationship of the individual to the state, has been reconstructed in feminist theorizing during the 1990s. Such work has analysed citizenship as plural and multi-layered, embodying the recognition of multiple identities and associated new claims for distributing and redistributing the rights and practices linked with citizenship (e.g. Yuval-Davis 1997; Young 1990). Whilst such work is useful for providing a general framework for understanding citizenship, there is a need to understand the realities of women's lives in specific African contexts and use this as a starting point for developing grounded theory on citizenship.

In Nigeria, for example, it is only relatively recently that women's status has been explicitly discussed at national levels by women's autonomous organizations in terms of *citizenship*. This is all the more paradoxical, given the heightened attention paid to certain categories of rights for women under military rule in the 1990s, such as reproductive rights, political rights and at the eve of the millennium, the right to freedom from gender based violence. Women's marginalisation from the national state has been largely instrumental in the recourse made by various categories of women's organizations to international discourses and frameworks of human rights. The prospects of a return to civilian rule and deepening processes of democratization of the state and society have no doubt facilitated what appears to be a re-articulation of human rights for women with discourses of citizenship. The articulation of rights discourses with

discourses of citizenship for women is in itself worthy of greater research attention than it has so far received.

The multi-textured character of women's citizenship is effectively depicted below in a memorandum (Salihu et al., 2002:3) sent to a recently constituted Presidential Committee on Provisions and Practice of Citizenship and Rights in Nigeria:

For women, whatever happens at the level of the domestic arena is in turn carried over to what is generally called the public space. The reason that this is significant is that women may experience the denial of their citizenship and fundamental human rights at any one, if not more, of these levels – family, community, private sector, state and so on. Hence it is necessary to go beyond the public space when we talk about women's citizenship and rights, to address the interconnected and interlocking character of women's lives as well as women's rights. Realising women's fundamental rights requires addressing women's unequal access to economic, political, social and cultural resources, which are located not only in formal, public arenas but also in private and semi-private places, households and communities. This is the paradox that lies at the heart of women's citizenship as well as public policy formulation and the political process today.

The sense in which women's experiences of citizenship are deeply steeped in experiences structured by gender inequality is also highlighted (Salihu et al., 2002:3):

Gender inequality is thus embedded in the most fundamental ways of being citizens – in the socio-cultural, political, economic and religious dimensions. Redressing these inequalities requires a systematic, deliberate approach that addresses the fundamental causes and effects of unequal citizenship status. This means that in addition to addressing constitutional provisions or the lack of them, there is also a need to go beyond these, particularly when discussing the application of such provisions. For Nigerian women to realize full citizenship status, much work needs to be done, in addition to reviewing and restructuring the 1999 Constitution. More specifically, this means creating the enabling environment in which policies and institutional mechanisms can be developed that allow women to have access to the decision making structures and processes that affect their lives as citizens of Nigeria.

At heart, citizenship is a fundamentally contested notion, for women and for men, but the terrain on which such battles are fought and sometimes won, differs considerably for women compared to men. This chapter points to a range of scenarios in which there is a clear need for research into the gendered contestations that take place over state or local citizenship. For example, women who have successfully contested and won entry into politics have been faced with concerted public denial of their right to contest (see Ibrahim and Salihu 2004).

This has been the case for women who contested in states in which their husbands were 'indigenes' as much as it has applied to women who contested in states where their fathers were 'indigenes'. The contradictions faced by married women in public life undermine the notion that citizenship is primarily about the relations between individuals and the state. Male contestants generally do not have their citizenship questioned on marital grounds.

In the wake of processes of constitutional review, women's citizenship in Nigeria has been the subject of considerable scrutiny and advocacy on the part of women's groups and others active in struggles for gender equity. Such struggles are taking place against a backdrop of widespread gender blindness and discrimination against women in legal and constitutional provisions as well as in social relations more generally. Yet gender sensitive research on citizenship is in its infancy. This essay highlights the ways in which the issues thrown up by advocacy on women's citizenship and existing writing in this area could be pursued in greater depth and breadth through a gendered research agenda.

There are three parts to the chapter. The first outlines some of the issues encompassing relations between states, civil society and citizens that form the backdrop to the focus on women's citizenship in Nigeria. These include themes such as federalism, laws and administrative practices that discriminate against women and the gendered effects of differing sources of citizenship. The second part of the chapter addresses the 1999 Constitution and advocacy around its review. Finally, I discuss women's citizenship as it is experienced in practice.

The State and Citizenship

What kind of state?

The excessive centralization of state power under military rule has left individual states weak and dependent on the federal government for resources and power. The current interest in federalism reflects a concern with the unity of the country and the consequences of its regimes of rule, in the aftermath of the Babangida (1985–1992) and Abacha (1993–1998) military regimes in particular. Earlier debates in the 1980s centred around ways of promoting greater local autonomy and equality of access to power and resources by federating units, in the context of considerable reduction in the powers of the federal government. This line of argument has been counterposed to the more recent focus on the creation of new states and local governments (Olukoshi and Agbu 1996).

Until the late 1980s, the state has been conceptualized in monolithic and unitary terms (Mama 1996). Ironically, it is the very machinations of military regimes in the realm of state configuration and reconfiguration that have contributed to the conception of the state as no longer given but subject to change (see Beckman 1996). Such change may take place at different levels of the state and to differing degrees; its existence highlights the significance of state

practices in upholding or undermining state structures. Both practices and structures are embedded in the fundamentally contested nature of the post-colonial Nigerian state.

Elsewhere I have discussed the need to clarify and reconcile the current territorial basis of divisions of power – states and state creation – with the rights of citizens, many of whom (predominantly women) are not territorially bound (Pereira 2001). The proliferation of states has not addressed the problems that their introduction was meant to solve. Indeed, continued state creation has created new problems whilst intensifying old ones. The emphasis on ‘indigeneity’, and therefore on ‘origins’, is contradicted by the reality of the ever changing boundaries of one’s ‘state of origin’. Women experience diverse forms of discrimination as a result.

Discriminatory features of state processes and practices restrict the character of citizenship in diverse ways. One such arena is that of the existing laws in Nigeria that discriminate against women, thus constituting a significant area of limitation on the application of citizenship and fundamental rights. The law on domestic violence is clearly inadequate, particularly regarding wife battery. Domestic violence is currently classified under common assault, which downplays the seriousness of this crime. According to section 55 of the Penal Code, wife beating is allowed as long as it does not amount to ‘grievous hurt’. As defined in section 241 of the Penal Code, ‘grievous hurt’ includes emasculation, permanent loss of sight, ability to hear or speak, facial disfigurement, deprivation of any member or joint, bone fracture or tooth dislocation (Imam 2000). This means that a man who beats his wife, short of exercising the injuries above, is acting within the law. One may very well ask how women’s fundamental right to dignity is protected under such circumstances.

Section 353 of the Criminal Code makes an indecent assault on males punishable by 3 years imprisonment. A similar offence of indecent assault on females treats it as mere misdemeanour punishable by a maximum of 2 years imprisonment (section 360), clearly a discriminatory provision. Rape is yet another area in criminal law where women are discriminated against on the basis of marital status. Forced sexual intercourse, or marital rape, is not recognized as an offence. Sexual harassment is also not recognized as an offence, despite the fact that it is extremely widespread (Imam 2000). In view of all this, it is not surprising that women’s organizations such as WRAPA (Women’s Rights Advancement and Protection Alternative), that work on violence against women and the human rights of women, have advocated strongly that the legislature should hasten the process of repealing all laws discriminating against women.

In addition to discriminatory processes and practices that are directly located within state institutions, there are certain administrative practices that pervade state institutions, institutions elsewhere in the public sector and in the private sector; these also discriminate against women in a number of ways. It is clear that

there is a multiplicity of practices and domains in which women are rendered second-class citizens. Discrimination against women on the basis of marital status is not prohibited in the Constitution or other Nigerian laws. Pregnant women who are not married continue to be targets in the civil service and in the private sector, being denied maternity leave because of their marital status. At the same time, qualified married women of childbearing age are often turned down by prospective employers on the grounds that, if employed, they would soon get pregnant and start asking for maternity leave. Taxation and revenue laws and policies discriminate against married women and women with children. Such women pay higher taxes than men because they have no automatic allowances for children, even if they are the only income earner in the household.

Breastfeeding mothers in the public sector, and often in the private sector too, lose part of their annual leave if they go on maternity leave. This is despite the fact that having a baby entails hard work and is in no way synonymous with having a holiday. Married women but not married men are prevented from joining the police. Women police officers but not their male counterparts require the written permission and approval of their prospective spouses before marrying. Women face restricted economic opportunities due to credit and loan conditions that are not illegal but are biased in favour of men. All of this points to the significance of the absence of a democratic culture in which women are recognized as full citizens in their own right. Such a culture needs to be fostered by government working in genuine partnership with civil society organizations and local communities.

Sources of citizenship

In federal polities such as Nigeria, citizenship is conferred at more than one level and experienced differentially at national and state levels. Nigeria's most recent Constitution, the 1999 Constitution, confers citizenship by birth via either parent or grandparent who 'belongs or belonged to a community indigenous to Nigeria' (s.25, 1a). Whilst this confers citizenship at a national level, women are expected to derive their state citizenship from a different source. Citizenship at the state level is defined in a masculinist way, in terms of the 'indigeneity' or 'state of origin' of one's father, but not one's mother. Gender activists have drawn attention to the ways in which the tension between these differing levels of citizenship has differing implications for women compared to men. Married women are often denied state citizenship when the 'state of origin' of their husbands is different from that of their fathers. Hence they lose indigeneity as defined through the father without gaining indigeneity as defined through their husbands. This experience is particularly contradictory in view of the constitutional call to 'encourage inter-marriage among persons from different places of origin, or of different religious, ethnic or linguistic association or ties' (s.15, 3c).

The contemporary conception of citizenship as defined by 'indigeneity' or 'state of origin' has consequences for its application. There is a huge gap between the promise of citizenship and its practice, which more often than not infringes on the fundamental human rights guaranteed to *all* citizens, female as well as male, under the 1999 Constitution. For women, these include rights such as freedom of movement, freedom from discrimination and freedom to acquire and own property. Married women are likely to have problems when seeking employment, scholarships, loans, land, admission to schools, in either their 'indigenous' states or in the states where their spouses are indigenous. When they seek access to such resources in the state where their husbands are indigenous, they are asked to apply for them in their indigenous states. The converse also applies.

Activists have pointed out that there is a need to treat citizenship at the national level separately from citizenship at the state level, in recognition of the different dynamics that operate at these levels in a federal polity. For example, Salihu et al., (2002) recommend that citizenship at the local level should be defined by residence and not by indigeneity. In other words, every Nigerian woman or man should have the right to reside anywhere in Nigeria and derive the benefits and resources accruable to any member of that society. This position has also been affirmed by other groupings such as the Citizens Forum for Constitutional Reform (CFCR). However, this option effectively aims at substituting *the* dominant source of citizenship – indigeneity – with another singular source, namely residence. No doubt, residence alone, if it were to be adopted as the basis for citizenship, would bring in its wake new problems for those people whose residence in a given locality fell short of the minimum period necessary to acquire full citizenship status.

What has not yet been fully taken on at the level of advocacy or research, is the question of whether or not it is possible or desirable for multiple sources of citizenship – birth, residence, indigeneity, marriage – to be equally recognised in practice. If yes, what kind of social and political changes would be required? In other words, how can the power relations that render some sources of citizenship more dominant than others in specific contexts, be addressed? What kind of administrative arrangements would be necessary to ensure equality in practice? Whilst it is beyond the scope of this essay to do justice to these questions, a closer look at the 1999 Constitution will point to some of the principal issues concerning women's citizenship that need to be engaged with more deeply, in advocacy as well as research.

Citizenship and the 1999 Constitution

The 1999 Constitution is in many ways a contradictory document, reflecting the authoritarian and arbitrary process that began with its formulation under the military regime of Sani Abacha (1993–1998), culminating with its imposition

under the military transition of Abdulsalami Abubakar (1998–1999). True to form, the fundamental principle of equality is enshrined, at least in intent, in the 1999 Constitution. Section 17 provides that 'the State social order is founded on ideals of Freedom, Equality and Justice'. These principles can be said to be respected in those provisions that *do* recognize women's rights and protect against discrimination. Section 15.2 expressly prohibits discrimination on the grounds of origin, sex, religion, status, ethnic or linguistic association or ties. The basic principle of gender equality is therefore embodied in the fundamental objectives and principles of the 1999 Constitution. Furthermore, the right to freedom from discrimination (s.42) provides that no citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall, by reason of being such a person, be subjected either expressly by, or in the practical application of any law, to any disabilities or restrictions to which citizens of Nigeria of any other community, ethnic group, place of origin, sex, religion or political opinion are not made subject.

At the same time, however, the Constitution is itself discriminatory and fails to protect women from discrimination in a number of ways. At least three major manifestations of this process can be identified. First, the language used is exclusively masculine. This applies as much to Chapter III on Citizenship as it does to Chapter IV on Fundamental Rights. The use of exclusively masculine language implies that the norm is masculine and therefore that women are not full citizens in their own right. Moreover, section 318 of Chapter VIII, Part IV, on interpretation of the Constitution, has no provision addressing this. Nowhere in the Constitution does it state clearly that references to the rights of male citizens apply also to female citizens (Imam 2000).

Secondly, the capacity to transfer citizenship is conferred on Nigerian men but not on Nigerian women. Section 26.2a provides for Nigerian men to confer citizenship by registration to their non-Nigerian wives but there is no such provision for Nigerian women. Thirdly, marriage confers adulthood on women but this is not the case for men. This provision is embedded in the section on renunciation of citizenship. Section 29.1 states that any citizen of full age who wishes to renounce their citizenship can do so. Section 29.4b goes on to state that married women are considered to be of 'full age', that is, fully adult. Since young girls are often married off as early as twelve years of age, this means that girls who are too young to vote may decide or be coerced into renouncing their citizenship.

There are also several areas in the Constitution that do not adequately protect the fundamental rights of women (Imam 2000). First, there is no definition of what constitutes discrimination against women. It has been argued by some that where the Constitution does not specifically provide protection on gender issues, the general safeguards against discrimination afforded to all citizens in the areas of governance, the economy, social order, health and education are enough to ensure that women's rights are protected. This does not take account of the fact

that some of the discriminatory practices that are specifically targeted at women – harmful traditional practices, such as widowhood rites for example – are not addressed by so-called ‘general’ safeguards against discrimination.

Secondly, there is a need to redress the imbalances between women and men through extensive and specific measures implemented for this purpose. This is the case for several domains, notably education, politics and governance. The need for specific measures is recognized in international treaties such as the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), as well as in the African Charter Protocol. Nigeria ratified CEDAW in 1985 without reservations and is therefore committed to providing special measures to enhance gender equality and protect against discrimination against women. This should be reflected in constitutional provisions.

It is worth noting that the provisions intended to ensure equality before the law for all citizens of Nigeria (s.42.1b) have been used to resist or challenge any form of affirmative action or temporary special measures designed to redress inequality, whether gender based or otherwise. Section 42.1b states that no Nigerian citizens shall be accorded any privileges or advantages under any laws, executive or administrative actions where such privileges and advantages are not accorded to other communities, ethnic groups, places of origin, sex, religions or political opinions. This ignores the fact that certain categories of citizen, mostly men, are currently already privileged and therefore enjoy the material and ideological resources accompanying these privileges that are not accorded to other categories of citizen.

Paradoxically, affirmative action is considered acceptable when it does *not* target women! One such form of affirmative action is ‘federal character’, ostensibly aimed at redressing regional and ethnic disparities. Federal character has been described as necessary in order to promote national unity, and also to command national loyalty, thereby ensuring that there shall be no predominance of persons from a few States or from a few ethnic or other sectional groups in the Government or in any of its agencies (s.14.3). Federal character has also been described as necessary in order to recognize the diversity of people within its area of authority and the need to promote a sense of belonging and loyalty among all peoples of the federation (s.14.4). The reference to federal character in section 318, on interpretation, does not include gender differences or even state, ethnic and sectional differences, in its characterization of the diversity of people living in the country.

Advocacy initiatives around constitutional reform

The ongoing review of the 1999 Constitution has afforded an opportunity for advocacy concerning constitutional reform, on the part of several organizations. Three main initiatives are reviewed below: proposals by Nigerian women under the auspices of the National Centre for Women (sic) Development; the process

initiated by the Citizens' Forum for Constitutional Review (CFCR); and the memorandum on 'Women's Citizenship Rights in Nigeria'.

i) Proposals by Nigerian Women on the Review of the 1999 Constitution

Following the formation of the Presidential Technical Committee on the review of the 1999 Constitution, women's organizations worked separately and collectively on the amendments and new provisions that they wanted to incorporate into a review of the Constitution. The proposals were collated and synthesized by the National Centre for Women Development under the leadership of Dr. Timi Agari and submitted to the Presidential Technical Committee as a 'Memorandum Conveying Proposals by Nigerian Women for Amendments to the 1999 Constitution'. Documentation on the processes leading to the formulation of the Memorandum is sadly lacking. A more comprehensive analysis of the processes, debates and challenges that formed the basis for the synthesis has yet to be carried out.

Nevertheless, two things are notable about this development. The first is that the diverse women's organizations were able to come together in the first place and reach a common position regarding proposed changes. The second point worth noting is that many of the women involved were also organizationally linked to mainstream human rights groupings that were striving for greater representation of women within their ranks and greater gender sensitivity in the content of their work. One such coalition was the Citizens' Forum for Constitutional Review (CFCR). Although the women's Memorandum suffered from a lack of follow-up at the level of the Presidential Committee, women were still able to draw on the proposals made in that Memorandum in their membership of the Citizens' Forum and their engagement with its work.

ii) The Citizens' Forum for Constitutional Review (CFCR)

The Citizens' Forum is a coalition of over forty civil society organizations 'committed to a process led and participatory approach to constitutional reform in Nigeria' (CFCR 2001: 1). The Forum has a nine-person National Steering Committee, six zonal co-ordinators and state co-ordinators for the thirty-six states of the Federation and Abuja. CFCR argues that the process of making the constitution is as important as the final product. The following principles are viewed as critical in guiding the constitution review process: inclusivity of all voices and opinions; diversity regarding ethnicity, language, religion and gender; participation of people at all levels; transparency and openness of the process; autonomy of the review body, process and final document; accountability of the review body to parliament and the people; and legitimacy through a national referendum to test the draft constitution.

Nine critical areas were identified as forming the focus of CFCR's intervention in constitutional review:

1. Citizenship and residency rights
2. Federalism (to address the over-concentration of powers at the centre)
3. Engendering the language and content of the Constitution
4. Fiscal federalism/resource control
5. Constitutionally entrenched independent commissions
6. Freedom of association and political parties
7. Social and economic rights
8. Access to justice and the rule of law
9. The role of the security sector

CFCR organized colloquia on all the themes above. Given the inter-related character of constitutional provisions, it is not only the colloquium on Citizenship and Residency Rights that is relevant for our purposes. The meetings brought together a range of actors that were working in the area: organizations in civil society, academics and practitioners from Nigeria and abroad, to share their knowledge and experience. Through the colloquia, the various sections of the Constitution were examined with a view to providing the basis for mobilization at State and Zonal levels, as well as the content for a model constitution.

The Citizens' Forum recommended the need for constitutional reform in two directions. The first concerns amendments to existing sections, addressing the following Fundamental Rights in Chapter IV of the 1999 Constitution:

- the right to freedom from discrimination (s.42)
- the need for affirmative action (addendum to s.42)
- the right to the dignity of the human person (s.34)
- the right to private and family life (s.37)

Much of the content of these amendments draws on the Women's Memorandum referred to earlier.

- Section 42 on the right to freedom from discrimination should be amended as follows: All persons are equal before and under the law in all spheres of politics, economic, social, cultural life and in every other respect and shall enjoy equal protection of the law.
- A proviso on affirmative action should be added to section 42: Notwithstanding anything in the Constitution, the state shall take affirmative action in favour of groups marginalized on the basis of gender, age, disability or any other reason created by history, tradition or culture, for the purpose of redressing imbalances which exist against them. At least 30 percent of all elective and appointive positions should be reserved for women.
- Section 34 on the right to the dignity of the human person should be strengthened. Subsection (a) should read: No person shall be subjected to torture or to inhuman or degrading treatment whatsoever; the subjection of any man,

woman or child to torture or degrading treatment on the basis of culture, custom, tradition or religion shall be prohibited.

- Subsection (d) should be added: No person shall be subjected to any law, culture, custom, tradition, religion or gender practice which undermines his or her dignity, welfare or interests.
- Section 37 on the right to private and family life should be considerably strengthened. The following subsections should be added:
 1. In recognition of the fundamental importance of reproduction to the continuity of family life, the state shall ensure that every pregnant woman shall have free access to pre-natal, perinatal and post-natal care.
 2. Men and women at the age of 18 years and above shall have the right to marry and found a family and are entitled to equal rights in marriage, during marriage and at its dissolution. The minimum age of marriage shall be 18 years.
 3. The National Assembly shall make appropriate laws for the protection of the rights of widows and widowers to inherit property of their deceased spouses and to enjoy parental rights over their children.
 4. Marriage shall be entered into with the free consent of the man and woman intending to marry.
 5. It is the right and duty of parents to care for and bring up their children, irrespective of marital status.
 6. Children may not be separated from their families or other persons entitled to bring them up against their own will or the will of their families except in accordance with the law.
 7. Male and female children shall have equal rights to inheritance.
 8. The rights in this section shall not be exercised in a manner inconsistent with any provisions of the Constitution.

The second direction in which the Citizens' Forum recommended constitutional reform is in the addition of new sections to Chapter IV on Fundamental Rights, which are to be made justiciable. These sections address the following themes:

- equality of sexes
- spousal rights
- the rights of mothers
- rights of the child
- the right to culture

The content of these sections is outlined below.

Equality of Sexes

1. Women shall be accorded full and equal dignity of the person with men.
2. The State shall provide the facilities and opportunities necessary to enhance the welfare of women to enable them to realize their full potential and advancement.

3. The State shall protect women and their rights, taking into account their unique status and natural maternal functions in society.
4. Women shall have the right to equal treatment with men and that right shall include opportunities in political, economic and social activities.
5. Without prejudice to article 42 of this Constitution, women shall have the right to affirmative action for the purpose of redressing the imbalances created by history, tradition or custom.
6. Laws, cultures or traditions which are against the dignity, welfare or interest of women or which undermine their status, are prohibited by this Constitution.

Spousal Rights

1. A spouse shall not be deprived of a reasonable provision out of the estate of a spouse, whether or not the spouse died having made a will.
2. The National Assembly shall, as soon as practicable after the coming into force of this Constitution, enact legislation regulating the property rights of spouses.
3. With a view to achieving the full realization of the rights referred to in subsection (2) of this Section:
 - a. each spouse shall have equal access to property jointly acquired during marriage; and
 - b. assets which are jointly acquired during marriage shall be distributed equitably between the spouses upon dissolution of the marriage.

Rights of Mothers

1. Special care shall be accorded to mothers during a reasonable period before and after childbirth; and during those periods, working mothers shall be accorded paid leave.
2. Facilities shall be provided for the care of children below school-going age to enable women to realize their full potential.
3. Women shall be guaranteed equal rights to training and promotion without any impediments from any person.

Rights of the Child

1. The National Assembly shall enact such laws as are necessary to ensure that:
 - a. Every child has the right to the same measure of special care, assistance and maintenance as is necessary for its development from its natural parents, except where those parents have effectively surrendered their rights and responsibilities in respect of the child in accordance with law;
 - b. Every child, whether or not born in wedlock, shall be entitled to reasonable provision out of the estate of its parents;
 - c. Parents undertake their rights and obligation of care, maintenance and upbringing of their children in co-operation with such institutions as the

- National Assembly may, by law, prescribe, in such manner that in all cases the interests of the child are paramount;
- d. Children and young persons receive special protection against exposure to physical and moral hazards; and
 - e. The protection and advancement of the family as the unit of society should safeguard promotion of the interests of children.
2. Every child has the right to be protected from engaging in work that constitutes a threat to his or her health, education and development.
 3. A child shall not be subjected to torture or other cruel or inhuman or degrading treatment or punishment.
 4. No child shall be deprived by any other person of medical treatment, education or any other social or economic benefit by reason only of religious or other beliefs.
 5. For the purposes of this article, 'child' means a person below the age of eighteen years.

Right to Culture

1. Every person is entitled to enjoy, practice, profess, maintain and promote any culture, language, tradition or religion subject to the provisions of this Constitution.
2. All customary practices which dehumanize or are injurious to the physical and mental well-being of a person are prohibited.

iii) 'Women's Citizenship Rights in Nigeria' – a Memorandum to the Presidential Committee on Provisions and Practice of Citizenship and Rights in Nigeria

In December 2001, a Presidential Committee was set up on 'Provisions and Practice of Citizenship and Rights in Nigeria'. Calls for memoranda were publicized in the media and a deadline set for February 2002. The terms of reference of the Committee were to:

- i. Examine the intent and implications of the constitutional provisions on citizenship and fundamental rights, and limitations on their application;
- ii. Identify sources of conflict between the constitutional provisions on citizenship and rights, and the issue of 'indigeneship', 'settler', 'host community' and 'native', etc.
- iii. Advise on measures necessary to achieve a fair and just balance between the legal provisions and the practical application of the constitutional provisions of citizenship and rights.
- iv. Identify roles of governments, communities and leaders in eliminating conflicts arising from disputes over the issue, concept and practice of citizenship and enjoyment of rights as constitutionally provided.

From the terms of reference, it can be seen that one of the assumptions underlying the work of the Committee is that the constitutional provisions on citizenship are basically appropriate and that the problems lay primarily in the implementation of those provisions. Achieving a 'balance' between legal provisions and the practical application of constitutional provisions concerned with women's citizenship and rights, for example, assumes that there is a level playing field for women and men.

Among those to respond was an ad hoc group of five gender activists, at least two of whom identify themselves as feminist (including myself).¹ The memorandum (Salihu et al., 2002) highlighted three major areas of concern, pointing out in the process that there is no level playing field as far as women's and men's citizenship and rights are concerned. The first was that limitations on the *application of constitutional provisions* on women's citizenship and rights existed in the form of numerous administrative, legal and cultural practices. These amounted to violations of women's rights to dignity, as well as physical and mental wellbeing.

Secondly, the memorandum pointed out that constitutional reforms were required that not only addressed fundamental rights but also the very *conception of citizenship*. Citizenship for women was restricted due to discrimination within the Constitution itself as well as the lack of protection for women's rights within the Constitution. Finally, there was a need to change the *practice of citizenship* so that women could claim full citizenship status in their everyday lives. At the very least, this required eliminating violence against women; creating an enabling environment for women to participate in decision making; and developing institutional mechanisms and policies to promote women's rights.

The statement below summarises a number of the key issues that have been expressed in different ways in the differing advocacy initiatives discussed. The Memorandum on Women's Citizenship and Rights (Salihu et al., 2002:15) outlined the following principles as a basis for changes in the way citizenship is conceptualized, provided for and practised.

- The *rights* of citizenship are accompanied by *obligations* to the state. The obligations of citizens to the state can only be discharged appropriately when governments are seen to be legitimate and state institutions work effectively towards justice for all citizens, women and men.
- The *powers* of the state are accompanied by *duties* to citizens. These include duties to protect and promote the human rights of female and male citizens, and prevent the violation of citizens' rights, for women and for men.

For both principles to operate, it is necessary to establish an environment in which *people can participate in governance*, and *government is open to working in a participatory manner with people*.

The practice of citizenship

Whilst the principles underlying the rights of citizenship may be articulated in a normative manner, as evident from advocacy initiatives such as the Memorandum on Women's Citizenship Rights in Nigeria, these principles are belied by the actual practice of citizenship in everyday life. It is the very distance between principle and practice that spurs advocacy and which, ideally, should inform research. The general statement of the existence of discrepancy between principle and practice applies, in differing ways, to men as well as women. My focus in this section is on some of the ways in which the practice of citizenship in contemporary Nigeria is specific to particular categories of women.

Customary laws

The denial of women's citizenship frequently occurs through the assertion of group rights, such as rights to 'culture', in ways that involve varying degrees of violence directed at women. At the same time, 'cultural' practices are generally spoken about as intrinsically unchanging and as essential to the sense of identity of a group of people. Mainstream representations of such practices tend to ignore shifting historical and political contexts, just as they ignore historical examples of women's pre-eminence in the exercise of power, and therefore deny the possibility of change in the face of continuity. The ways in which 'custom', 'tradition' and/or 'culture' have been used specifically against women, have been documented under the rubric of harmful traditional practices. However, the linkage between such practices and women's experiences of citizenship is not often made.

Women's right to dignity is often violated through practices that are justified as 'customary'. Under many customary laws, wives are expected to undergo very harsh and degrading rites at widowhood and are often subjected to ritual periods of isolation. Discriminatory socio-cultural practices such as male preference, child marriage, forced marriage, female genital mutilation, wife beating and other harmful practices limit the possibilities for women to realize constitutional provisions on citizenship and fundamental rights. More work is needed on the construction of customary laws and their role in the practice of violence. There is a clear need for research to analyze the ways in which customary laws are produced, reproduced as well as modified, with a view to sustaining those that combine social justice with gender equity.

Women's access to credit is blocked usually as a consequence of discriminatory customary laws concerning women's right to own property. Male supremacist structures of authority, whether in kinship structures or 'traditional' rulers, often act to marginalize women systematically from access to and control over land. The significance of such access and control is located in the relationship between land rights, property rights and the sustainability of livelihoods. Without land or property rights, women are unable to provide collateral for bank loans or formal credit schemes. This undermines their ability to sustain livelihoods that are not,

in themselves, dependent on land usage. Questions such as land distribution and its relationship to land use and the possibility of establishing tenure security for all within the context of gender equality are critical for advocacy as well as research.

The application of criminal law in Sharia

In November 1999, Ahmed Sani Yerima, Governor of Zamfara State, inaugurated the extension of Sharia to include criminal law in the State of Zamfara. Sharia in Nigeria had previously been applied only in the domain of personal law, that is in matters relating to marriage, divorce, child custody, maintenance, inheritance and the like. The practice of Sharia had never previously utilized the *budud*, i.e. criminal punishment such as caning, amputations and so on. The event was a turning point in Nigeria's political and legal history. The contradictions in the 1999 Constitution, the politicization of religion and the demise of the justice system at a time when 'democracy' was expected to bring about improvements in the quality of life (however defined) for citizens are some of the critical features leading to this state of affairs.

Controversy has continued to shroud the Sharia which has since spread on a state-by-state basis, taking differing forms in different states. By December 2001, Sharia in its use of criminal law had been legally established in the States of Zamfara, Sokoto, Niger, Kebbi, Kano, Katsina, Jigawa, Borno, Yobe, Bauchi, Kaduna and Gombe. Plans were afoot to extend Sharia similarly in Kwara, Oyo, Lagos, Ogun, Osun, Taraba, Adamawa, Plateau, Nasarawa and Kogi States. This statement was made by the President of the Supreme Council for Sharia in Nigeria (SCSN), Dr. Ibrahim Datti Ahmad, at a meeting of the Council in Gusau, Zamfara State capital, in December 2001 (Babalola 2001).

Religious laws, as well as customary laws, have often been used to violate women and deny them their citizenship rights. Whilst punishments such as amputations, flogging and the threat of death by stoning may be used against men as well as women, women are more likely to be criminalized in circumstances involving sexual relations. Muslim men have succeeded in using provisions intended to protect women, in pursuit of the criminalisation of certain categories of Muslim women (Iman 2001).

The most notorious case in the year 2001 concerned Safiyatu Hussaini of Tungar Tudu, a village in a remote part of the Gwadabawa Council area of Sokoto State, who was sentenced to death for adultery in October 2001. She had been raped three times by a man called Yakubu Abubakar. The attacks took place after she had separated from her husband and she subsequently fell pregnant (Uguru 2001). She left Tungar Tudu for her mother's village but was caught by the police and brought back to Gwadabawa. Her pregnancy was used against her and Safiya was charged with adultery.

Yakubu denied any responsibility for Safiya's pregnancy, refused to contribute to her daughter's naming ceremony and was later discharged for lack of evidence by the judge when the case went to a Sharia court in Gwadabawa, Sokoto State. Safiya, on the other hand, was tried and found guilty by the same court; the penalty was stoning to death. Her sentence was widely condemned by human rights groups across Nigeria and abroad. A Sharia Appeal Court in Sokoto granted her a reprieve at the end of November 2001. The appellate court granted her a stay of execution of the death sentence until her grounds for appeal were heard (*ThisDay* 2001).

Safiyatu's conviction did not go unresisted. Women's groups such as INCREASE (International Center for Reproductive Health and Sexual Rights) strongly condemned the sentencing of Safiyatu to death. Dorothy Akan'Ova, the Executive Director, pointed out that according to the Sharia, Safiya, as a divorcee, should not have been charged with adultery but with fornication. The punishment for the latter was 100 strokes of the cane as opposed to death by stoning. Moreover, the judge, having discharged the man named by Safiya as responsible for her pregnancy, Yakubu, had no basis for charging her 'as she could not have committed adultery by herself' (Alofetekun 2001).

Human rights groups and NGOs in Nigeria took part in the "Safiya Must Not Die Campaign", co-ordinated by Abiola Afolabi, the co-ordinator of WARDC (Women Advocates Research and Documentation Centre). Abiola pointed to the controversial unfolding of events culminating in the extension of Sharia to include criminal law in northern states of the country. Whilst President Olusegun Obasanjo had described the extension of Sharia as politically motivated, the then Attorney-General of the Federation, Chief Bola Ige, had pronounced the development as constitutional (Anaba 2001).

Women also organized in religious groups, across religious lines. The women's wing of the Pentecostal Fellowship of Nigeria (PFN), under the auspices of Social Security Outreach (SSO), took a letter of protest to the Alausa Secretariat, seat of the Lagos State Government. Women carried placards with messages such as "SSO women say no to Safiyatu's death", "Tinubu, don't let them kill Safiyatu", "Motherhood says spare Safiyatu", "Women say no to Safiyatu's death". Led by their president, Grace Onyekwene, the women in a letter addressed to Governor Bola Tinubu, asked for his intervention:

We may not be able to reach the governor of Sokoto State, but we can reach you our governor, and we know you can reach the governor of Sokoto.

.....Our motive is straightforward. We want our daughter pardoned and her life spared. We do not want Nigeria (sic) motherhood stoned to death. (Ogunmodede 2001).

On Monday 25 March 2002, Safiya Hussein was discharged and acquitted after the Sharia Court of Appeal overturned the Gwadabawa Upper Sharia Court rul-

ing. One of the main reasons for her acquittal was that Sharia law could not be applied retrospectively: the law took effect in Sokoto State on 31 December 2001 whereas Safiya was charged with adultery on 23 December 2000. Other reasons were technical, such as not establishing the date, time and location of the offence; not ascertaining Safiya's sanity or whether she understood the term *zina* (Arabic for adultery); not informing her of her right to appeal; not accepting the withdrawal of her confession and so on (Bello and Abdulsalami 2002). Ultimately, however, the substantive charge of being criminalized for pregnancy out of marriage was not addressed.

Activists working on Safiya's case in Sokoto State found at least four other women incarcerated in jail, in similar circumstances to Safiya, awaiting death sentences. Their cases were unknown to the wider world and unreported. And whilst the judgement on Safiya's appeal was still pending in March 2002, a Sharia court in Bakori, Katsina State, sentenced another woman, Amina Lawal Kurami, to death by stoning after finding her guilty of adultery. The man charged with her, Yahaya Mohammed, was discharged after he denied the allegation (Asemota and Uzendu 2002).

Violence against women

Perhaps the clearest example of the devalued status of women's citizenship is the widespread existence of alarmingly high levels of violence against women in Nigeria, in new as well as old forms. Violence against women represents one of the largest obstacles to realising female citizens' rights to life (s.33) and to dignity of the human person (s.34). Women, often those living in poverty but not poor women alone, suffer all kinds of assaults and violence. These may occur simply because they are women or because they attempt to assert their fundamental rights as citizens, whether politically, economically or socially. Such conflict – gender conflict – is not generally recognized as a serious form of conflict, simply because the violence rarely involves large numbers at any one time and because its intensity may be relatively low in a number of cases. Yet women are attacked, maimed, raped and killed on a daily basis. As the Legislative Advocacy Coalition on Violence Against Women put it: 'Violence Against Women must be treated as a national crisis. There can be neither justice, development nor democracy if Violence Against Women is seen as acceptable' (LACVAW 2001a: 41).

The generalized tolerance of high levels of woman abuse, by the state as well as by the society at large, constitutes one of the greatest challenges to women realising full citizenship status. As long as women are unable to exercise control over their minds and bodies, and as long as women cannot claim rights to dignity in the way that they are treated by other people, they cannot claim full citizenship status. Salihu et al., (2002:17) make it clear that '[t]he responsibility for eradicating violence against women lies with all members of Nigerian society, including the state, civil society organizations, community leaders and members.'

The authors propose the following measures to remove obstacles to women's full citizenship status, in the form of violence against women. The proposed measures, in their view, could be achieved through interdepartmental collaboration and co-ordination of state institutions, as well as collaborative initiatives between the state, civil society organizations and grassroots communities (Salihu et al. 2002:17–18).

- Government should prohibit all forms of cultural, administrative and legal practices that constitute and perpetuate violence against women.
- Government, civil society organizations and the society at large should work towards the eradication of all forms of cultural, administrative and legal practices that constitute and perpetuate violence against women.
- Government, civil society organizations and the society at large should work towards the support of cultural beliefs that enhance the dignity of women.
- Government should support initiatives to transform cultural beliefs in line with the constitutional commitment to freedom, equality and justice for all citizens, including women and girls.
- Government should be open to legislative advocacy on violence against women. Legislation, backed by vigorous public enlightenment campaigns, should abolish abuses of the rights of women and girls.
- There should be an automatic incorporation of international treaties and conventions, such as CEDAW (the Convention on the Elimination of All forms of Discrimination Against Women) once Nigeria ratifies them.

The increasing salience of women's organizing around particular features of woman abuse is evident from the formation of two coalitions on violence against women in the same year, 2001. The National Coalition on Violence Against Women was formed in January 2001 and officially launched on 13 March 2001. Set up by 12 founding organizations, the main goals of the Coalition are to increase awareness of all forms of violence against women and to campaign for its eradication. The National Coalition carries out its work through research, advocacy and the provision of support to female survivors of violence (see LACVAW 2001a: 43–44).

At the end of January 2001, the Legislative Advocacy Coalition on Violence Against Women (LACVAW) was formed after a conference of stakeholders active in pursuing a legislative agenda on issues of concern to women. The focus of the meeting was violence against women in all its forms. The conference, convened by the International Human Rights Law Group,² had two main aims. The first was to harmonise the efforts of NGOs that were proposing Bills at the State and National Assemblies on issues such as domestic violence, inheritance rights, harmful traditional practices and so on. The second aim was to multiply the efforts of such groups by encouraging and supporting the formation of collaborative networks. The conference brought together women and men from

fifty-five civil society organizations, the federal executive, the legislature, the judiciary and international human rights groups (LACVAW 2001a).

The following points of consensus emerged in the resolutions. The first concerned the formation of a Coalition. Participants agreed that there was a need to form a Coalition that would take responsibility for initiating a process that would result in the enactment of a National Bill on Violence Against Women. Such a Bill would be comprehensive, as opposed to addressing a singular manifestation of woman abuse, in order to serve as a reference point for women in all parts of the federation. Implicitly, if not explicitly, the Bill acknowledges the significance of social cleavages such as class, 'tradition' and religion in rendering some categories of women more vulnerable to violence. Whilst foregrounding legislation, LACVAW acknowledges that:

The formulation of laws alone is not enough to eliminate Violence Against Women. We must accept to transform our cultural beliefs, prohibit and eradicate all forms of cultural, administrative and legal practices that constitute and perpetuate Violence Against Women (LACVAW 2001b: 1).

Getting a Bill enacted is viewed as only the starting point for a longer-term process of monitoring its subsequent implementation. Accordingly, the work of the Coalition includes community advocacy, sensitization and mobilization. A second stakeholders' meeting was held at the end of February 2002 to review the draft Bill. By 20 March 2002, the finalized Bill entitled 'Violence Against Women (Prevention, Protection and Prohibition) Act 2002' was sent to the sponsor, Hon. Florence Aya, the Chairperson of the House of Representatives Committee on Women Affairs and Youth Development, for onward submission to the House of Representatives in the National Assembly.

Citizenship and ethno-religious conflict

The erasure of women's citizenship through the masculinist way in which 'indigeneity' has been constructed has a number of repercussions. There is an intimate relationship between 'indigeneity' and ethnicity, each of these terms resting as they do, on a territorial base. Apparent differences between 'settlers' and 'hosts' are critical in justifying unequal treatment of the two groups, whether this concerns land rights, political rights, economic rights and so on. Uncovering the extent of discrimination as well as privilege vis-à-vis women's (not only men's) access to resources, key social structures and institutions – employment, education, political office, marriage, property ownership – is likely to reveal a more complex scenario than is often envisaged. At the same time, the differences that are said to exist between groups are often premised on the assumption that the groups may be *identified* as different in the first place. An uncovering of the extent of intermarriage that is likely to have taken place between groups living in close proximity, however hostile they are to one another, may well pose the question of

how distinct from one another the 'settlers' and 'hosts' truly are. Recognizing that there are multiple sources of citizenship entails reconstructing ethnicity in terms that are inclusive, as opposed to being exclusive, of women.

Our understanding of conflicts arising between so-called 'settlers' and 'hosts', such as the Ife–Modakeke clashes in the South West, the Tiv–Jukun conflicts in central Nigeria, to name a few, needs to take account of the gendered configuration of the respective groups. During situations of communal conflict, women are often faced with having to choose between the families they were born into and the families they have married into. At the same time, during communal conflicts, women may be under special threat of gender-based violence, such as sexual assault or rape, on the part of members of the 'enemy' group. When it comes to peacemaking, women are rarely involved in official discussions or negotiations concerning the resolution of conflicts, despite being the ones who are predominantly faced with the task of caring for community members and picking up the pieces after periods of conflict.

Social and economic rights

Organisations such as Gender and Development Action (GADA), the Citizens' Forum for Constitutional Review and the activists setting out the memorandum on Women's Citizenship and Rights have all addressed the question of social and economic rights for citizens, particularly women. Salihu et al. (2002) argue that for women to attain full citizenship status, it is necessary that they have access to the full range of fundamental human rights, including social, economic and cultural rights in addition to civil and political rights. It is in the denial of social, economic and cultural rights as well as political rights that women have most often experienced diminished citizenship status. Hence, the authors argue, improving the status of women's citizenship and implementing women's rights requires the development of appropriate institutional mechanisms and policies.

Salihu et al. (2002) also draw attention to the extent of poverty in the country and the fact that the poorest of the poor are women. The authors argue that national budgetary votes must be able to answer the question: What percentage of public spending in every sector is geared towards addressing women's concerns? Answering this question will require a high degree of co-operation among government agencies such as the Ministry of Finance, the agency responsible for audits and the Federal Office of Statistics. The authors also argue that government should allocate sufficient funds for the implementation of the National Policy on Women. The arguments for gender budgeting are increasingly being voiced, even if the capacity to carry out such work will yet need to be built.

The realization of social and economic rights requires policy formulation and implementation to be carried out in a participatory manner with members of civil society organizations and communities (see NWSN 1998). The continued need for gender-disaggregated data in all social and economic sectors has been

highlighted by several actors. The Federal Office of Statistics began its efforts in this direction in 1996. This initiative needs to be sustained and harmonized across state institutions. State institutions need to be able to work more efficiently and effectively in order to protect and promote the fundamental rights of female as well as male citizens, and to this end, gender sensitive capacity building for state officials is required. At the same time, the capacity for women's organizations to engage the state with regard to policy formulation, implementation and so on is fundamental. The pan-African women's organization ABANTU for Development has carried out research and training aimed at building the capacity of women's organizations to engage with policy (ABANTU 1997).

One of the recommendations of the Citizens' Forum for Constitutional Review was that a constitutionally entrenched Gender and Social Justice Commission should be set up to replace the Federal Character Commission. The Gender and Social Justice Commission should be independent of the Executive and funded from the consolidated fund. Membership should reflect gender balance and other diversities such as age, ethnicity, religion, marital status and disability. Members should be appointed through a process that is competitive, open and transparent. The functions of the Commission would be to:

- Promote gender equity and ensure the establishment of social justice in all spheres of life.
- Ensure that all discriminatory laws, policies and practices that are in conflict with basic principles of equality and social justice should be repealed.
- Monitor the observance of social and economic rights.
- Monitor all appointments to ensure that they reflect the principle of gender balance.
- Monitor the implementation of social and economic rights.

Concluding Remarks

Women's experiences indicate that their citizenship is treated as being of secondary or devalued status relative to men's citizenship, a likely consequence of the subordinated status of most categories of women. This chapter has highlighted how many of the most fundamental ways of being citizens are steeped in gender inequality – citizenship for women is more often experienced in the denial of rights than their realization. The effects have been to exclude most women from formalized, state-centred modes of recognising 'belonging', and the access as well as entitlement to resources, to structures and processes of decision making, that flow from such recognition.

The classic conception of citizenship as the (unmediated) relationship between the individual and the state is destabilized once women's experiences of citizenship are placed in the foreground and made the subject of analysis. Women's citizenship, more often than men's citizenship, is mediated by processes within families,

communities and civil society, in addition to the injustices inherent within the institutions and processes of the state itself. The situation is compounded by divergent sources of citizenship at national and state levels, in the contemporary federal polity.

The recognition that the practice of citizenship is not synonymous with its ideal requires a concerted examination of the realities of women's lives in specific contexts. This essay has outlined women's experiences in diverse yet overlapping areas such as customary laws, the application of criminal law in Sharia, violence against women, ethno-religious conflict, social and economic rights. From this, it is clear that the contested character of citizenship for women is often fought on distinctly different terrain from that of male contestations.

Developing grounded theory that recognises the plural and multi-layered texture of citizenship will require a contextualised understanding of the realities of women's lives and experiences. At the same time, recognition of women's activism and analysis of the issues highlighted by the varied spheres of struggle around women's citizenship points to areas that could fruitfully be pursued further in a gendered research agenda.

Notes

- 1 These were Amina Salihu, Nkoyo Toyo, Charmaine Pereira, Ime Udom and Chinonye Obiagwu.
- 2 Now known as Global Rights.

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